

**WILLIAMSBURG
BOARD OF ZONING APPEALS
MINUTES**

May 7, 2002

The regular meeting of the Williamsburg Board of Zoning Appeals was held on Tuesday, May 7 at 3:00 p.m. in Conference Room 3B, Third Floor, Williamsburg Municipal Building, 401 Lafayette Street.

ATTENDANCE

Present were Board members Chohany, Carr, Kafes, Knudson, and White. Also present were Zoning Administrator Murphy and Secretary Scott.

CALL TO ORDER AND MINUTES

Chairman Kafes called the meeting to order.

The minutes of the April 2, 2002 meeting were approved viva voce.

PUBLIC HEARINGS

BZA #07-02: Request of Richard & Karen Sager for a variance from Section 21-481 of the Zoning Ordinance to allow an addition to be located 16 feet from the rear property line instead of 20 feet as required by the approved final subdivision plat. The property is located at 517 Suri Drive, Williamsburg Tax Map Number 379-(01)-2B-024 and is zoned Planned Development District PDR. Withdrawn by applicant.

Chairman Kafes introduced the case, noted that the Board of Zoning Appeals does not have unlimited authority, and reviewed the applicable portion of Section 21-97(b)1 of the Zoning Ordinance which states: "When a property owner can show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the chapter, or where, by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property immediately adjacent thereto, the strict application of the terms of the applicable provisions of this chapter would effectively prohibit or unreasonably restrict the utilization of the property, or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of this chapter."

Further, Mr. Kafes stated that according to Section 21-97(b)2. of the Zoning Ordinance, "No such variance shall be authorized by the board unless it finds:

- a. That the strict application of this chapter would produce undue hardship.
- b. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
- c. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance."

Chairman Kafes invited the applicant's representative, Cathy Short, to comment. After brief discussion with the Board it became clear that, although the Sagers had applied for a "sun porch," in fact they propose to construct a "screened porch."

Zoning Administrator Murphy clarified that according to the Zoning Ordinance Section 21-607(c), an unenclosed porch up to 12 feet into the required rear yard is permitted.

On behalf of the Sagers, and because the request was unnecessary after all, Ms. Short withdrew the application.

BZA #10-02 Request of Jon Bischel for a variance from Section 21-481 of the Zoning Ordinance to reduce the front yard setback to 25 feet instead of 35 feet as shown on the recorded subdivision plat. The property is located at 20 Frenchmen's Key, Williamsburg Tax Map Number 555-(04)-00-094 and is zoned Planned Unit Development District PUD. Approved.

Chairman Kafes reviewed the memorandum dated May 3, 2002, in which the background for this request is detailed.

Chairman Kafes invited the applicant/applicant's representative to comment.

Owner Jon Bischel was present with builder Dave Harvey who reviewed the six exhibits demonstrating attempts to place the house on the lot, and noted that the lot is trapezoidal shape and unable to provide adequate square footage for the design and construction of a dwelling with good building design unless the front setback is reduced. Mr. Harvey said that he has tried twisting and turning the dwelling, but all attempts have fallen over the required setback. He added that reducing the front setback from 35 to 25 feet provides the following positive effects:

1. Moving the building area forward ten feet improves the width/depth design relationship needed to produce a reasonable layout.
2. By moving the house forward, the symmetry of the placement of homes along that side of Frenchmen's Key is improved.
3. A reduction in the amount of concrete for drive lane is accomplished.
4. A better opportunity to preserve trees is accomplished.
5. No alteration is necessary in 2400 square foot footprint.

Mr. Harvey added that he doesn't know what they will do if this request is denied.

In response to Mr. Chohany's query, Mr. Bischel answered that he has owned the property for about four or five months and did not realize how much of a challenge building on it would be.

Other points:

- Six lots are left to be developed in Port Anne and all are sold, larger and, although some present more of a challenge due to lot contours, they are all developable.
- There is no requirement for a garage to be front loading. However, there is a requirement that the garage accommodate two cars.
- Mr. Harvey has built 15 or 16 homes in the Port Anne community and this is the first time he has run into this problem with house placement.

Mrs. Murphy stated that it is pretty obvious that this challenging-shaped lot was overlooked at the time of site plan review.

Chairman Kafes opened the public hearing.

Dave Schultz, 10 Frenchmen's Key, lot 92, supports the request. He said approval would give an opportunity to correct what seems to have been a mistake that was overlooked, offer the chance to salvage a beautiful tree, and benefit surrounding lots.

There being no additional comment the public hearing was closed.

Comments from the Board included:

- There is a demonstrable hardship present and clear difficulty to configure a sensible design.
- The applicant has presented a compelling case.
- The lot shape is obviously a mistake overlooked, and if request not granted the character of the district will be changed.
- Appalled that realtor was evidently not aware of the lot's difficult shape
- This is a unique situation.

Mrs. Knudson moved that the request be approved based on Zoning Ordinance Section 21-97(b)2. "No such variance shall be authorized by the board unless it finds:

- a. That the strict application of this chapter would produce undue hardship.
- b. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.

- c. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.”

In making their decision the Board also considered Zoning Ordinance Section 21-97(b)1. “When a property owner can show that his property was acquired in good faith and where by reason of exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the chapter, or where, by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property immediately adjacent thereto, the strict application of the terms of the applicable provisions of this chapter would effectively prohibit or unreasonably restrict the utilization of the property, or where the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of this chapter.”

Mr. Chohany seconded Mrs. Knudson’s motion which carried by roll call vote of 5-0.

Recorded vote on the motion:

Aye: Carr, Chohany, Kafes, Knudson, White
No: None
Absent: None

OLD BUSINESS – None

NEW BUSINESS

Mr. Kafes thanked Mr. Carr for raising the following items for Board discussion:

- ***Priority of Board approvals***
Currently the Architectural Review Board occasionally makes their decision regarding a case before them contingent upon the Board of Zoning Appeals’ approval. The consensus of the Board was to have appropriate cases come before the BZA prior to going to the ARB with discretion given to the Zoning Administrator.
- ***Requirements of the “Sunshine Law”***
Although Board members have benign intentions, the appearance projected by traveling together to case sites prior to making decisions on cases before them may be misconstrued. It was suggested that Board members meet at the sites, traveling there in their own vehicles rather than traveling in the City vehicle to avoid any hint of impropriety. Also, the Board asked that the newspaper ad notice of the BZA meeting, include an announcement of the site viewing time as well as the formal hearing itself.

This issue was granted consensus approval by the Board.

- ***Limitations on the length of time for public comment***
City Council has such limits and this Board determined that limits also need to be placed on public comment at BZA meetings. The following limits will be effective immediately:
 - ✓ Individuals = five minutes
 - ✓ Individual speaking on behalf of a group = 15 minutes
 - ✓ BZA decision appeal = 30 minutes for each sideThe Board reserves the right to waive the above-noted limits.
- ***Comment/Rules of procedure/Agenda Format***
The Board asked that staff prepare a meeting packet and have it at the door for public perusal.
- ***Precedent Issues***
The Board asked that for each meeting staff prepare, to the extent staff can do so relatively easily, a document noting previous Board decisions on similar cases. It was noted that the BZA Annual Report is also a good resource.
- ***Suggestions for code amendments***
The Board can always make recommendations for code amendments on an ad-hoc basis.
- ***Staff Recommendations***
Consensus of the Board was to ask the Zoning Administrator at the meeting for staff recommendations on a particular case rather than have recommendations included in the packet.

OTHER

Board members received revised copies of the Zoning Ordinance.

There being no further business before the Board the meeting adjourned at 4:40 p.m.

Respectfully submitted,

Judy Knudson, Secretary